

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

19-Cr-833 (SHS)

JOSEPH DEPAOLA,

Defendant.

Plea

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New York, N.Y.
February 2, 2021
12:05 p.m.

Before:

HON. SIDNEY H. STEIN,

District Judge

APPEARANCES

AUDREY STRAUSS

United States Attorney for the
Southern District of New York

BY: BENET KEARNEY

Assistant United States Attorney

ZMO Law PLLC

Attorneys for Defendant

BY: ZACHARY MARGULIS-OHNUMA

VICTORIA N. MEDLEY

1 (Case called)

2 THE DEPUTY CLERK: Counsel, please State your names
3 for the record.

4 MS. KEARNEY: Good afternoon, your Honor. Benet
5 Kearney for the United States.

6 MR. MARGULIS-OHNUMA: For Mr. Depaola, Zachary
7 Margulis-Ohnuma and Victoria Medley, 260 Madison Avenue, New
8 York, New York. Mr. Depaola is virtually present with us.
9 Good afternoon, your Honor.

10 THE COURT: Good afternoon.

11 MS. MEDLEY: Good afternoon.

12 THE COURT: Mr. Depaola, you can see and hear me.
13 Correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: I can see and hear you.

16 Are you aware you've been charged with violations of
17 federal law?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you consulted with your attorney
20 about those charges?

21 THE DEFENDANT: Yes.

22 THE COURT: And I understand you wish to enter a plea
23 of guilty to a charge in the indictment against you.

24 Is that correct?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand, sir, that you have a
2 right to appear physically before me in a courtroom when you
3 enter your plea of guilty?

4 THE DEFENDANT: Yes.

5 THE COURT: And do you also understand you have a
6 constitutional right or at least a statutory right to have your
7 attorney standing with you physically in that courtroom when I
8 sentence you?

9 THE DEFENDANT: Yes.

10 THE COURT: And do you understand that the COVID-19
11 pandemic has interfered with our ability to be all together and
12 in the courtroom?

13 THE DEFENDANT: Yes.

14 THE COURT: And have you discussed those issues with
15 your attorney?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You also have the right to give up your
18 right to stand before me physically in a courtroom and to have
19 your attorney next to you.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: And I understand that you've decided to
23 waive those rights and to proceed in this fashion -- for the
24 record, we're using a Skype for Business link -- and for me to
25 take your plea today remotely.

1 Is that correct?

2 THE DEFENDANT: Yes.

3 THE COURT: I want you to know that you have the right
4 to speak to Mr. Margulis-Ohnuma privately at any time. So all
5 you have to do is say that you want to speak to your attorney
6 privately, and then we'll arrange for you to be able to speak
7 with him privately, either on a separate cell phone or in a
8 virtual room.

9 Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. I do make the finding that we
12 must proceed, that the ends of justice permit us to proceed,
13 and this case cannot be further delayed without serious harm to
14 the interests of justice.

15 Now, I have a document in front of me. It's dated
16 January 20. It's six pages long. I'm going to refer to it as
17 the plea agreement.

18 Mr. Margulis-Ohnuma, is this the plea agreement that
19 your client wishes to plead guilty to?

20 MR. MARGULIS-OHNUMA: Yes, your Honor.

21 THE COURT: Ms. Blakely, if you would administer the
22 oath, please, to the defendant.

23 (Defendant sworn)

24 THE DEPUTY CLERK: Please state your full name and
25 spell your last name for the record.

1 THE DEFENDANT: Joseph Depaola, D-e-p-a-o-l-a.

2 THE DEPUTY CLERK: Thank you.

3 THE COURT: Mr. Depaola, do you understand that you
4 are now under oath and that if you answer any of my questions
5 falsely, your false or untrue answers may later be used against
6 you in another prosecution for perjury or for making a false
7 statement?

8 THE DEFENDANT: Yes, sir. I do.

9 THE COURT: How old are you, sir?

10 THE DEFENDANT: Thirty-one.

11 THE COURT: How far did you go in school?

12 THE DEFENDANT: I graduated high school.

13 THE COURT: Are you able to read, write, speak, and
14 understand English?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: English is your native language; correct?

17 THE DEFENDANT: Yes.

18 THE COURT: Are you now or have you recently been
19 under the care of a doctor or a psychiatrist?

20 THE DEFENDANT: No, sir.

21 THE COURT: Have you ever been treated or hospitalized
22 for any mental illness or any type of addiction, including drug
23 or alcohol addiction?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: When was that?

1 THE DEFENDANT: I don't have the exact dates of my
2 stints in rehab. But my sobriety date is May 1 of 2018. So
3 sometime in 2017.

4 THE COURT: So if I understand you correctly, you were
5 treated for alcoholism?

6 Is that correct?

7 THE DEFENDANT: Yes. Drug and alcoholism. Yes.

8 THE COURT: Drug and alcohol.

9 Did you go to a residential program at any point?

10 THE DEFENDANT: Yes. Yes. I've been in -- it was
11 called Turning Point. It was in Paterson, New Jersey. I
12 believe I've been there two or three times. And I've also been
13 in outpatient programs as well.

14 THE COURT: And the last time was in 2017 or 2018?

15 THE DEFENDANT: Yes.

16 THE COURT: In the past 24 hours, sir, have you taken
17 any drugs, medicine, or pills or consumed any alcohol?

18 THE DEFENDANT: No, sir.

19 THE COURT: Is your mind clear today?

20 THE DEFENDANT: Yes.

21 THE COURT: Are you feeling all right?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you have counsel here?

24 THE DEFENDANT: Yes.

25 THE COURT: Who is that?

1 THE DEFENDANT: Zach.

2 THE COURT: Mr. Margulis-Ohnuma, do you have any doubt
3 as to Mr. Depaola's competence to plead at this time?

4 MR. MARGULIS-OHNUMA: None whatsoever, your Honor.

5 THE COURT: Now, I've been told that you wish to enter
6 a plea of guilty.

7 Is that true?

8 THE DEFENDANT: Yes, it is.

9 THE COURT: Have you had a full opportunity to discuss
10 your case with Mr. Margulis-Ohnuma and Ms. Medley?

11 THE DEFENDANT: I have.

12 THE COURT: And to discuss the consequences of
13 entering a plea of guilty?

14 THE DEFENDANT: Yes. I have.

15 THE COURT: Are you satisfied with your attorneys and
16 their representation of you?

17 THE DEFENDANT: I am, your Honor.

18 THE COURT: On the basis of Mr. Depaola's responses to
19 my questions and my observations of his demeanor, I make the
20 finding that he is fully competent to enter an informed plea at
21 this time.

22 Before I accept a plea from you, sir, I'm going to be
23 asking you certain questions. Those questions are intended to
24 satisfy me that you --

25 (Pause)

1 THE COURT: All right. Let's proceed.

2 I should have said before that this is of course a
3 public proceeding and there can be other people involved -- not
4 "involved" but other people listening. There is a right to a
5 public trial and at every material part of the proceeding.

6 I don't know if we're being heard by the UN or
7 whatever, but just be aware of what happened. That is, we were
8 listening to a talk. It appeared to be a speech on the current
9 political situation in Myanmar. So this may be an open line,
10 but let's continue.

11 (Pause)

12 THE COURT: Before I accept a plea from you,
13 Mr. Depaola, I'm going to be asking you certain questions that
14 are intended to satisfy me that you want to plead guilty
15 because you are actually guilty and that you understand
16 completely the consequences, which are substantial, that will
17 flow if you enter a plea today and if I accept it.

18 I'm going to be describing to you certain rights you
19 have under the Constitution and laws of the United States.
20 You're going to be giving up those rights if you enter a plea
21 of guilty today, sir.

22 Listen to me carefully. And if you don't understand
23 anything that I'm saying or asking you, stop me and tell me
24 that. I'll answer any questions you have. You can speak to
25 your attorney privately. You can ask him or her any questions

1 you want.

2 Do you understand all that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Under the Constitution and laws of the
5 United States, you have a right to a speedy and public trial by
6 a jury on the charges against you which are contained in
7 indictment 19 CR 833.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: If there were a trial, Mr. Depaola, you
11 would be presumed innocent, and the government would be
12 required to prove you guilty by competent evidence beyond a
13 reasonable doubt. You would not have to prove you were
14 innocent at a trial.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: If there were a trial, a jury composed of
18 12 people selected from the Southern District of New York would
19 have to agree -- and they'd have to agree unanimously -- that
20 you are guilty.

21 Do you understand those rights?

22 THE DEFENDANT: Yes.

23 THE COURT: You have a right to be represented by an
24 attorney at trial and at every other stage of the proceedings.
25 If you cannot afford an attorney, one will be provided to you

at no cost to you.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: If there were a trial, you would have the right to see and hear all of the witnesses against you, and your attorney could cross-examine them. You would have a right to have your attorney object to the government's evidence and offer evidence on your own behalf, if you so desired. And you would also have the right to have subpoenas issued or other compulsory process used to compel witnesses to testify in your defense.

Do you understand those rights?

THE DEFENDANT: Yes.

THE COURT: If there were a trial, you would have the right to testify if you wanted to, but no one could force you to testify if you did not want to. In addition, no inference or suggestion of guilt could be drawn if you chose not to testify at trial.

Do you understand those rights?

THE DEFENDANT: Yes.

THE COURT: Do you understand that by entering a plea of guilty today, you're giving up each and every one of the rights I've been listing for you, sir, and that you're waiving those rights and there will be no trial in the action against you?

1 THE DEFENDANT: Yes, your Honor. I do.

2 THE COURT: Do you understand that you can change your
3 mind right now and refuse to enter a plea of guilty?

4 You don't have to enter a plea of guilty if you do not
5 want to for any reason.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Have you received a copy of the indictment
9 in this case?

10 THE DEFENDANT: Yes, I have.

11 THE COURT: Did you read it?

12 THE DEFENDANT: Yes.

13 THE COURT: Did you discuss it with your attorneys?

14 THE DEFENDANT: Yes. We have.

15 THE COURT: You have the right to have me read that
16 indictment right now. Or if you don't want me to, you can
17 waive my reading of it.

18 Do you want me to read it, or no?

19 THE DEFENDANT: No. Thank you.

20 THE COURT: All right. I accept that as a knowing and
21 voluntary waiver of the right to have the indictment read in
22 open court. And because of the COVID-19 pandemic and the fact
23 that this is a public line, this is deemed to be open court.

24 Do you understand that you're charged in Count One
25 with participating in a conspiracy to commit wire fraud in

connection with the conduct of telemarketing in violation of 18 U.S. Code, Sections 1349 and 2326?

THE DEFENDANT: Yes.

THE COURT: Do you understand that if you do not plead guilty, the government would have to prove each and every part or element of the charge in that indictment beyond a reasonable doubt?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Ms. Kearney, set forth the elements, please, of Count One.

MS. KEARNEY: Yes, your Honor. If we had proceeded to trial on Count One, the government would have been required to prove beyond a reasonable doubt:

First, that two or more persons in some way or manner agreed to try and accomplish a common and unlawful plan to commit wire fraud; and second, that the defendant knew the unlawful purpose of that plan and willfully joined in it.

With respect to the wire fraud object, that has three elements:

First, that there was a scheme or artifice to defraud or to obtain money or property by means of false and fraudulent pretenses, representations, or promises.

Second, that the defendant knowingly and willfully participated in that scheme.

And third, that in the execution of that scheme, the

1 defendant used or caused the use of interstate wires.

2 Additionally, under Section 2326, the government would
3 be required to prove that the offense was committed in
4 connection with telemarketing and that it either victimized ten
5 or more people over the age of 65 or that it targeted people
6 over the age of 65.

7 The government would also be required to prove venue
8 in the Southern District of New York by a preponderance of the
9 evidence.

10 THE COURT: Do you understand, Mr. Depaola, those are
11 the elements the government has to prove, all of them beyond a
12 reasonable doubt, except for the element, or the question
13 rather, of venue, which the government's burden is to prove by
14 a preponderance of the evidence?

15 Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that the crime to which
18 you're entering a plea of guilty, that is, Count One, carries a
19 maximum term of imprisonment of 30 years, a maximum term of
20 supervised release of 5 years, a maximum fine of the greatest
21 of \$250,000 or twice the gross pecuniary gain derived from the
22 offense or twice the gross pecuniary loss to individuals other
23 than you resulting from the offense, and a \$100 mandatory
24 special assessment?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, in describing to you just now what
2 the maximum penalty was, I said that part of that maximum
3 penalty was five years of supervised release.

4 Supervised release, sir, means you're going to be
5 subject to monitoring upon your release from prison. And that
6 monitoring is to be under terms and conditions which could lead
7 to your re-imprisonment without a jury trial for all or part of
8 the term of supervised release and without credit for time
9 previously served on post-release supervision if you violate
10 any term or condition of supervised release.

11 Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you also understand that I can order
14 restitution to anyone injured as a result of your criminal
15 conduct?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that if I accept your
18 guilty plea today, sir, and determine you to be guilty of Count
19 One, that determination will deprive you of such valuable civil
20 rights as the right to vote, the right to hold public office,
21 the right to serve on a jury, and the right to possess any kind
22 of firearm?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, Mr. Margulis-Ohnuma, I assume -- I
25 shouldn't assume.

1 Is your client a United States citizen?

2 MR. MARGULIS-OHNUMA: Yes. He is, your Honor.

3 THE COURT: All right. Thank you.

4 Mr. Depaola, under current law, there are sentencing
5 guidelines that I have to use when applying the factors set
6 forth in 18 U.S. Code, Section 3553(a) to determine what your
7 sentence is going to be in this case.

8 Have you talked to your attorneys about the sentencing
9 guidelines?

10 THE DEFENDANT: Yes, I have.

11 THE COURT: Do you understand that I won't be able to
12 determine what the appropriate guideline range is until after I
13 receive a presentence report that's going to be completed by
14 the probation office?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You're going to be interviewed by them,
17 sir, and your attorneys will be able to be there. I need you
18 to give them accurate and complete information because I read
19 that report very carefully.

20 And you and your attorneys and the government will be
21 able to file any objections to the report prior to sentencing,
22 and I'll adjudicate those objections, if any. But do give them
23 honest and complete information.

24 Do you understand that?

25 THE DEFENDANT: Yes, I do.

1 THE COURT: Now, after I receive that report and after
2 I receive any information you and your lawyers and the
3 government for that matter want to give me, I'll determine what
4 the guideline range is in this case.

5 But even after I do that, I can impose a sentence that
6 is higher than the guidelines, in other words, sentence you to
7 more prison than the guidelines call for, or for that matter,
8 fewer months in prison, a lower sentence, than the guidelines
9 call for based on a departure from the guidelines.

10 Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Even after I do that, I then have to apply
13 all of the factors in Section 3553(a) to determine what a fair,
14 reasonable, and appropriate sentence is and one that's
15 sufficient but not greater than necessary to meet the ends of
16 the criminal justice system.

17 Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, do you understand that if you're
20 sentenced to prison, the system of parole that used to exist no
21 longer does?

22 Parole has been abolished. So if I sentence you to
23 prison, you will serve that term in prison. You will not be
24 released any earlier on parole.

25 Do you understand that?

1 THE DEFENDANT: I do, sir.

2 THE COURT: Do you understand that if anyone has
3 attempted to tell you what your sentence is going to be or even
4 if you think you know what your sentence is going to be,
5 everybody could be wrong?

6 Do you understand that?

7 THE DEFENDANT: I do. Yes.

8 THE COURT: And the reason is I'm the one who's going
9 to sentence you. And I don't know what your sentence is going
10 to be because I don't know enough about you -- about your
11 crime; your upbringing; your criminal record, if any; your
12 finances; your role in this crime; your education -- a lot of
13 things.

14 I need to know much more about you and the crime that
15 you've committed before I can determine what a fair sentence
16 is. So since I'm going to sentence you and I don't know what
17 you're going to be sentenced to, nobody else can know what
18 you're going to be sentenced to.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And if you are in fact sentenced to
22 something by me that's different than what anyone has told you
23 it could be or will be or should be or even if it's different
24 from what you think it's going to be, you still are going to be
25 bound to this guilty plea, sir. You won't be allowed to

1 withdraw it, and you will serve that term in prison.

2 Do you understand?

3 THE DEFENDANT: I understand.

4 THE COURT: Now, at the beginning of this allocution,
5 I discussed the January -- I referred to the January 20 letter,
6 which I'll call the plea agreement. And the copy that I have
7 on page 6 has what appears to be your signature and that of
8 Mr. Margulis-Ohnuma. And it's dated January 27.

9 Did you sign that agreement, sir?

10 THE DEFENDANT: Yes, I did, your Honor.

11 THE COURT: Did you read it before you signed it?

12 THE DEFENDANT: Yes.

13 THE COURT: Did you discuss it with your attorneys
14 before you signed it?

15 THE DEFENDANT: Yes. We did.

16 THE COURT: Did you fully understand it, sir, at the
17 time you signed it?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Does this letter agreement constitute your
20 complete and total understanding of the entire agreement
21 between the government, your attorney, and yourself?

22 THE DEFENDANT: Yes, it does.

23 THE COURT: Is everything about your plea and sentence
24 contained in this agreement?

25 In other words, are there any side arrangements I

1 should know about?

2 THE DEFENDANT: No, sir.

3 THE COURT: Okay. Is everything that I need to know
4 about your plea and sentence contained in this document?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Has anyone offered you any inducements or
7 threatened you or forced you to plead guilty or to enter into
8 the plea agreement?

9 THE DEFENDANT: No, sir.

10 THE COURT: Now, do you understand that in this plea
11 agreement, you agreed to forfeit to the United States \$100,000
12 in United States currency?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that in this agreement,
15 you have agreed to make restitution in a sum ordered by me?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now, do you happen to have a copy of the
18 agreement in front of you?

19 THE DEFENDANT: I don't, your Honor. I can pull it
20 up.

21 THE COURT: That's all right. You don't have to have
22 it.

23 Mr. Margulis-Ohnuma, do you have one? You're muted,
24 sir.

25 MR. MARGULIS-OHNUMA: Sorry. I do, your Honor.

1 THE COURT: If you'll turn to page 2, you'll see that
2 the defendant is referred throughout with the pronoun "her" --
3 "her" allocution, "her" intentional, imposed on "her." This is
4 simply a conspiracy by Ms. Kearney and Ms. Fletcher.

5 But apart from that, I take it that you accept the
6 fact that the reference is to "him," meaning the defendant.

7 MR. MARGULIS-OHNUMA: Yes, your Honor.

8 THE COURT: Obviously just so the record is clear,
9 it's not a conspiracy by Ms. Kearney and Ms. Fletcher. It's
10 simply a typographical error, or I may say that it's the
11 government using a form.

12 MS. KEARNEY: That's correct, your Honor. I can
13 confirm that was an oversight.

14 THE COURT: That's all right.

15 Now, do you also understand that in this agreement,
16 you, Mr. Depaola, otherwise known as "him" or "he," have
17 stipulated to the fact that the guideline range is 46 to 57
18 months?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that in this agreement,
21 you've waived your right actually to file an appeal and to file
22 a collateral attack on the sentence if I sentence you to 57
23 months in prison or fewer months?

24 THE DEFENDANT: Yes. I understand.

25 THE COURT: Do you understand that the intent of this

1 agreement is to waive all defenses based on the statute of
2 limitations?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: And do you understand that because the
5 system of parole that used to exist in the federal criminal
6 justice system no longer exists -- parole has been abolished.

7 Because of that, if I sentence you to prison or when I
8 sentence you to prison, you will have to serve that whole term
9 in prison. You won't be released any earlier on parole.

10 Do you understand that?

11 THE DEFENDANT: Yes. I understand.

12 THE COURT: Mr. Margulis-Ohnuma, do you know of any
13 valid defense that would prevail at trial or know of any reason
14 why your client should not be permitted to plead guilty?

15 MR. MARGULIS-OHNUMA: I do not, your Honor.

16 THE COURT: In your view, sir, is there an adequate
17 factual basis to support Mr. Depaola's plea of guilty?

18 MR. MARGULIS-OHNUMA: Yes.

19 THE COURT: Government, is there an adequate factual
20 basis, in the view of the government, to support this
21 defendant's plea of guilty?

22 MS. KEARNEY: Yes, your Honor.

23 THE COURT: All right, Mr. Depaola. Tell me now what
24 you did in connection with Count One, that is, the crime to
25 which you're entering a plea of guilty.

1 THE DEFENDANT: So from June of 2018 till roughly
2 August of 2019, I was a part of a telemarketing floor in New
3 Jersey where we were selling business opportunities to people
4 whom I knew were not going to make money with those
5 investments. I also knew that ten or more of them were over
6 the age of 55.

7 THE COURT: Where was the floor?

8 THE DEFENDANT: In Englewood, New Jersey, as well as
9 Montvale, New Jersey.

10 THE COURT: Were any of the calls made into Manhattan
11 or the Southern District of New York? Your calls. If you
12 know.

13 THE DEFENDANT: I'm not positive. I would assume so,
14 your Honor.

15 THE COURT: Without an assumption,
16 Mr. Margulis-Ohnuma, what's the venue connection here?

17 MS. KEARNEY: If I may, your Honor.

18 THE COURT: Yes.

19 MS. KEARNEY: Certain of the victims of the total
20 conspiracy were located in the Southern District of New York.
21 Off the top of my head, I'm thinking of one in the Bronx.

22 THE COURT: Mr. Depaola, when you did these things,
23 did you know that what you were doing was wrong and illegal?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, you said you were selling business

1 opportunities, biz ops; correct?

2 THE DEFENDANT: Yes.

3 THE COURT: And you were selling them for money. You
4 were requiring investments by these people.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Were these people primarily older people?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you knew that biz ops were
9 non-existent. That's not the word.

10 That these people would never make money from the
11 so-called "busy opportunities" that you were selling them.

12 Is that right?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: But you continued to sell it anyway.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And you kept on calling them to make sure
17 that they would give you as much money as you could get.

18 Correct?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Were you a floor salesman?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Is there anything else,
23 Mr. Margulis-Ohnuma, that you want on the allocution?

24 MR. MARGULIS-OHNUMA: No. No, your Honor.

25 THE COURT: Ms. Kearney?

1 MS. KEARNEY: No. Thank you.

2 THE COURT: What's the evidence, Ms. Kearney, that you
3 have against this defendant?

4 MS. KEARNEY: With respect to Mr. Depaola, your Honor,
5 the evidence would consist of the testimony of victims of the
6 wire fraud, as well as cooperating witnesses.

7 It would also consist of evidence that was obtained
8 from searches that were executed on the two telemarketing
9 floors, as well as email accounts that were used in connection
10 with the telemarketing scheme.

11 THE COURT: Mr. Depaola, how do you now plead to the
12 charge in Count One? Guilty or not guilty?

13 THE DEFENDANT: Guilty, your Honor.

14 THE COURT: Are you pleading guilty, sir, because you
15 are guilty?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Are you pleading guilty voluntarily and of
18 your own free will?

19 THE DEFENDANT: Yes, sir. I am.

20 THE COURT: Because you acknowledge you are guilty as
21 charged, because I find you know your rights and are waiving
22 them knowingly and voluntarily, because I find your plea is
23 entered knowingly and voluntarily and is supported by an
24 independent basis in fact containing each of the essential
25 elements of the offense, I accept your guilty plea,

Mr. Depaola, and I adjudge you guilty of Count One.

Just a moment.

(Pause)

THE COURT: Ms. Blakely, could you give me a sentencing date and make it on a day where we have other people in this conspiracy, this fraud.

THE DEPUTY CLERK: We can do April 26 at 3:30.

THE COURT: All right. I'm going to set the date for sentencing at April 26, 2021, at --

Did you say 3:30?

THE DEPUTY CLERK: Yes.

THE COURT: At 3:30. Let's work on the assumption that it will be in my courtroom at 500 Pearl Street. If not and if there's a waiver and consent, we'll do it virtually.

MR. MARGULIS-OHNUMA: Judge, if I may. I anticipate being on trial at that time if things open up like we're hoping they will. But I think, given the vagaries of the PSR process, I would let you know when it's closer to the date if we need to adjourn that.

THE COURT: I understand that. Fine. Given the vagaries of when things go to trial also because that other trial may not proceed.

Is it federal or state?

MR. MARGULIS-OHNUMA: It's a federal case in the Eastern District. The defendant has been in prison for over

1 two years and has been pushing very hard to be the first trial
2 out of the box when things open up. Hopefully it will proceed.

3 THE COURT: Just keep me informed.

4 Government, is there any application here in regard to
5 bail?

6 MS. KEARNEY: No. There's not.

7 THE COURT: Mr. Depaola, do you understand that you're
8 going to remain out on bail?

9 I'm not remanding you at this time. The government is
10 not seeking your remand. I see no reason to do so. So you're
11 going to stay out on bail, but you have to follow all of the
12 conditions of your release up until now.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. I don't have any reason to
16 think that you will violate any condition now. Up to now,
17 nothing has been brought to my attention. Just make sure it
18 continues that way.

19 Do you understand?

20 THE DEFENDANT: Yes, I do, sir.

21 THE COURT: Is there anything else, Ms. Kearney?

22 MS. KEARNEY: No. Thank you very much, your Honor.

23 THE COURT: Mr. Margulis-Ohnuma or Ms. Medley,
24 anything?

25 MR. MARGULIS-OHNUMA: No, your Honor. Thank you.

1 THE COURT: All right. I thank all of you. We'll see
2 you on the date of sentencing or any adjourned date that I set.
3 Thank you. The Court is leaving the call.

4 MR. MARGULIS-OHNUMA: Thank you.

5 THE DEFENDANT: Thank you.

6 (Adjourned)

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